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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

FILED

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STEPHEN D. HUNG, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TRI-STATE ADVERTISING
UNLIMITED, INC.,
a corporation, and
JEROME ANTHONY WILKINS,
individually and as an officer
of said corporation, and
DARYL ALLEN BENDER,
individually,

Defendants.

CIVIL NO. 1:98CV0302

JUDGE WILLIAM C. LEE

U.S. MAGISTRATE JUDGE
ROGER B. COSBEY

X99 6033

STIPULATED FINAL JUDGMENT AND ORDER

Plaintiff, the Federal Trade Commission ("FTC"), filed its complaint pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants with violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). On October 5, 1998, this Court granted the FTC's motion for a temporary restraining order with asset freeze, appointment of a temporary receiver and other equitable relief, and ordered defendants to show cause why a preliminary injunction should not issue against them. The parties subsequently agreed to entry of a stipulated preliminary injunction, which this Court granted on October 16, 1998.

NOW, plaintiff, by and through its counsel, and Tri-State Advertising Unlimited, Inc., and Jerome A. Wilkins ("Defendants," as hereinafter defined) by and through their counsel, have agreed

to the entry of this Stipulated Final Judgment and Order ("Order") by this Court, to resolve all matters of dispute between them in this action without trial or adjudication of any issue of law or fact. The said parties having requested the Court to enter this Order, it is, therefore, ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the Defendants. Venue in the Northern District of Indiana is proper.
2. The Complaint states a claim upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
3. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.
4. The activities of Defendants are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. Defendant Tri-State Advertising Unlimited, Inc., is an Indiana corporation that has done business as:

Aids Awareness Circular	Central Drug Abuse
Aids Awareness Digest	Child Abuse Awareness
Aids Prevention Digest	Child Protection Guide
Alcohol & Chemical Prevention Digest	Child Safety Guide
American Child Safety Periodical	Citizens For A Cleaner Environment
Anthony Corporation	Community Against Drugs
Anthony Enterprises	Community Drug Abuse Enforcer
Anthony Wilkinson	Community Drug Abuse Journal
Central Cities Collections	Concerned Citizens Against Child Abuse

Crime Prevention
Defeat Aids Now
Disabled Veterans
Don't Drink & Drive
Drug Abuse Prevention Guide
Drug Free Community
Educate Our Youth
Eliminate Drug Usage
Environmental Awareness Guide
Find Our Lost Children
Fire Safety Guide
Forgotten Veterans
Frank Enterprises
Frank Larsen Advertising
Franklin Company
Gang Alert Digest
Halt Teenage Drinking & Driving
Help Our Children
Help Save A Life
Hugs Not Drugs
Indiana Building Review
Indiana Drug Abuse Guide
Indiana Drug Free Community
Indiana Firefighters Association
Indiana Life Support
Indiana's Forgotten Veterans
Keep America Working
Keep Our Children Safe
Kentucky Drug Free Community

Kentucky Life Support
Kentucky Drug Abuse Guide
Kentucky Parent-Child Protection
Labor Digest
Labor Dispatch
Labor Post
Labor Review
Labor Sentinel
Labor Voice
Mid Ohio Collections
Mid Central Collections
Miller Enterprises
Ohio Drug Abuse Guide
Ohio Life Support
Our Children's Education
Parent-Child Protection
Parents Against Drug & Alcohol Abuse
Parents Against Narcotics United
Parents Drug Free Environment
People Against Aids
Prevent Aids-Save Our Youth
Prevent Alcohol Abuse
Prevent Child Neglect
Protect Our Children
Protect Our Young
Protect the Environment
Save Our Environment
Stay In School
Stop Child Neglect

Stop Crime

Teens Against Alcohol

Stop Drug Abuse

Think Before You Drink

Stop the Killing

Watkins Agency

Stop The Insanity

Wilkes Collections

Stop Violence Against Children

Wilkie Agency

Substance & Alcohol Abuse Review

Substance Abuse Review

and possibly other d/b/a's.

6. Defendant Jerome A. Wilkins is the President, Incorporator, Director and Registered Agent of Tri-State Advertising Unlimited, Inc. At all times material to this proceeding, individually or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of the corporate defendant, including the acts and practices set forth in plaintiff's Complaint.

7. By stipulating and consenting to the entry of this Order, Defendants do not admit any of the allegations in the Complaint, except those contained in paragraphs 1 through 6 herein. Likewise, by executing this Order, plaintiff does not admit that any defense to the Complaint is valid.

8. Defendants enter into this Order freely and without coercion and acknowledge that they understand the provisions of this Order and are prepared to abide by its terms. At all times, Defendants have been represented by counsel, including throughout the negotiations that led to this Order.

9. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and further waive and release any claims Defendants may have against the Commission and the Commission's employees, agents, or representatives. Defendants also waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412.

10. Any voluntary bankruptcy petition filed by Defendants does not automatically stay this action, which the Court finds is the "commencement or continuation of any action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." 11 U.S.C. § 362(b)(4); *FTC v. R.A. Walker*, 37 F.R. 608, 610 (D.D.C. 1983).

11. Any voluntary bankruptcy petition filed by any Defendant does not divest this Court of jurisdiction to enter this final judgment against Defendants.

12. Defendants expressly agree that they will not seek to have the judgment under this Order discharged by any proceeding under the U.S. Bankruptcy Code, 11 U.S.C. § 101 *et. seq.*, and Defendants further agree that the judgment under this Order is not so dischargeable. This Order is without prejudice to the rights of the Commission to prove non-dischargeability of the liability under this Order in any bankruptcy proceeding filed by or against Defendants.

13. This action and the relief awarded herein is in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies; and,

14. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Defendants" means Tri-State Advertising Unlimited, Inc., and Jerome A. Wilkins, and their officers, agents, directors, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, successors, assigns, all other persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal

service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, and each of them.

2. "Person" means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

3. "Consumer" includes any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

4. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

ORDER

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants are hereby restrained and enjoined from, directly or indirectly, making or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation in connection with the distribution, marketing or sale of advertisements in, or sponsorships of, publications or programs, including—but not limited to:

A. any misrepresentation concerning the distribution of any advertisement, publication or program;

B. any misrepresentation concerning the printing or publishing of any advertisement, publication or program;

C. any misrepresentation concerning any person's approval or authorization or obligation to make any payment for or to sponsor any advertisement, publication or program;

D. any misrepresentation concerning the printing of any advertisement or listing in reliance on prior authorization to do so;

E. any misrepresentation concerning the costs incurred in printing, publishing or distributing any advertisement, publication or program;

F. any misrepresentation concerning any payment constituting a donation or concerning the use, distribution, or tax deductibility, of any payment or payments received;

G. any misrepresentation concerning any publication or program being in any way associated with any federal, state or community association or other entity;

H. any misrepresentation concerning their identity(ies) and/or relationship with each other and/or to any publication, program, corporation or any other entity.

II.

PERMANENT BAN

IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from:

A. contacting, directly or indirectly, any person who previously paid, or was asked to pay, for any advertisement or sponsorship by Defendants, or from whom any Defendant collected, or attempted to collect, any payment since 1990;

B. engaging or participating — whether directly, in concert with others or through any business entity, investment or other device — in the offering for sale, sale, marketing or distribution of any advertising, listing, or sponsorship in any publication or program; and from

C. using any aliases, pen names or pseudonyms, or otherwise misrepresenting their true identities in the course of business dealings or in publicly filed documents.

III.

PROHIBITION AGAINST DISTRIBUTION OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, or other identifying information of any person who paid any money to any Defendant, at any time, in connection with the offering for sale, sale, distribution, marketing, or sponsorship of any advertisement, publication, program or product. *Provided, however,* that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IV.

JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment is entered against the Defendants in favor of the Commission in the amount of \$530,000 (Five Hundred Thirty Thousand Dollars) for equitable monetary relief, including, but not limited to, consumer redress. The Commission and the Defendants agree that this sum represents the estimated loss to consumers arising from the activities described in the Commission's Complaint against Defendants. The Defendants are jointly and severally responsible for paying said judgment within twenty (20) business days after the date of entry of this Order. Such payment shall be remitted

to the Federal Trade Commission, Eaton Center—Suite 200, 1111 E. Superior Avenue, Cleveland, Ohio 44114, by certified or cashier's check.

B. In partial satisfaction of this judgment, within ten (10) business days after entry of this Order, Grabill (Indiana) Bank shall transfer to the Federal Trade Commission, Eaton Center—Suite 200, 1111 E. Superior Avenue, Cleveland, Ohio 44114, by certified or cashier's check, all cash currently held in account number 114708-5 in the name of Jerome Wilkins. Defendant Wilkins shall execute all documents as are necessary to effect the transfer of the funds in this account to the Commission.

C. The Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

V.

DISSOLUTION OF CORPORATION

IT IS FURTHER ORDERED that within thirty (30) days upon entry of this Order, Defendant Wilkins shall file the necessary papers to legally dissolve Defendant Tri-State Advertising Unlimited, Inc., and shall concurrently mail to the Commission a copy of such papers accompanied by a sworn statement that they have been filed.

VI.

CONSUMER REDRESS AND DISGORGEMENT

IT IS FURTHER ORDERED that:

A. Funds transferred to the Commission pursuant to Paragraph IV of this Order shall fully satisfy all monetary claims against Defendants asserted by the Commission in the Complaint filed herein and shall be used to provide redress to purchasers of Defendants' advertisements and pay expenses of administering the redress fund.

B. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury, or shall be used to educate consumers allegedly affected by the practices in the Commission's Complaint in this matter. Defendants shall have no right to contest the manner of distribution chosen by the Commission;

C. Defendants expressly waive any right to litigate the issue of disgorgement;

D. Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between the Commission and the defendants of the Commission's claims against Defendants in this action.

E. No portion of the money paid by Defendants pursuant to this Order shall be deemed the payment of any fine, penalty, or punitive assessment.

VII.

ASSET FREEZE LIFTED

IT IS FURTHER ORDERED that the freeze of Defendant Wilkins' assets, as ordered in Paragraph II of the Temporary Restraining Order first entered in this matter on October 5, 1998, *and*

continued by stipulation of the parties, shall be lifted upon: (i) entry of this Order; and (ii) Defendants' payment to the FTC of the amount set forth in Paragraph IV of this Order.

VIII.

COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years commencing with the date of entry of this Order, Defendant Wilkins shall notify in writing the Regional Director, Cleveland Regional Office, Federal Trade Commission, Eaton Center—Suite 200, 1111 Superior Avenue, Cleveland, Ohio 44114, of:

- A. Any changes in residence, mailing address, and telephone number, within ten (10) days of the date of such change;
- B. Any change in Defendant's employment status (including self-employment), within ten (10) working days of such change; such notice shall include the name and address of each business that defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of Defendant's duties and responsibilities in connection with the business; and
- C. Any proposed change in the structure of any business entity owned or controlled by Defendant, such as creation, incorporation, assignment, sale or dissolution of subsidiaries, or any other changes that may affect compliance obligations arising out of this Order, within thirty (30) days prior to the effective date of any proposed change; *provided, however*, that with respect to any proposed change in structure of such business about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as practicable after learning of such proposed change.

IX.

RECORDKEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years commencing with the date of entry of this Order, Defendant Wilkins, in connection with any business entity in which he is a majority owner, or which he otherwise controls, shall create and maintain:

- A. Records sufficient to demonstrate his compliance with the provisions of this Order:
- B. Records containing the name, address, telephone number, and social security number of each person employed by Defendant in any capacity, that person's job title or position, the date upon which the employee commenced work, and the date and reason for the employee's termination;
- C. Records containing the name and address of each person to whom Defendant sells, invoices, or ships any product for which the person pays Fifty Dollars (\$50.00) or more;
- D. Records of every written or oral consumer complaint—including complaints referred from any third party, such as any office of the Better Business Bureau or any State Attorney General—and every refund request received by any Defendant or Defendants, which records shall include, to the extent that the information is available from the written complaint or the consumer is willing to provide the information:
 - 1. The person's name, address, telephone number, and the dollar amount paid by the person;
 - 2. The written complaint or refund request, if any, and the date of the complaint or refund request;
 - 3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
 - 4. Each response and the date of the response;
 - 5. Any final resolution and date of resolution;

6. In the event of a denial of a refund request, the reason for the denial, or if satisfied, the basis for determining that the complaint has been satisfied; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials that relate to any product or service offered for sale, sold or promoted by the Defendant or through any agent of the Defendant.

X.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT WILKINS

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendant Wilkins of this Order as entered by the Court, Defendant shall submit to the Commission a truthful sworn statement, in the form that is Attachment A to this Order, that shall acknowledge receipt of this Final Order.

XI.

FTC's AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendant Wilkins' compliance with this Order by all lawful means—including, but not limited to, the following:

A. The Commission is authorized—without further leave of this Court—to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26–37, including the use of compulsory process pursuant to Federal R. Civ. P. 45, for the purpose of monitoring and investigating compliance with any provision of this Order by Defendant Wilkins.

B. The Commission is authorized—without the necessity of prior notice—to use representatives posing as consumers to Defendant Wilkins, and his employees or any other entity managed or controlled in whole or in part by the Defendant;

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

XII.

ORDER DISTRIBUTION

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant Wilkins shall:

A. Immediately provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of the same, from each officer, director, managing agent, employee, or independent contractor in any company or other business entity directly or indirectly owned, operated, or controlled by Defendant; and

B. Maintain, and upon reasonable notice make available to the FTC's representatives, the original and dated acknowledgments of the receipts required by this Paragraph.

XIII.

NOTICES

IT IS FURTHER ORDERED that for purposes of this Order, Defendant Wilkins shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

REGIONAL DIRECTOR
In Re: FTC v. Tri-State Advertising Unlimited, Inc., et al.
Federal Trade Commission – Cleveland Regional Office
Eaton Center—Suite 200, 1111 Superior Avenue
Cleveland, Ohio 44114

XIV.

WAIVER OF CLAIMS


IT IS FURTHER ORDERED that Defendant Wilkins waives all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and all rights to seek appellate review or otherwise challenge or contest the validity of this Order, or the temporary or preliminary orders entered in this proceeding, and further waives and releases any claim he may have against the FTC, or its employees, agents, or representatives.

XV.

CONTINUED JURISDICTION

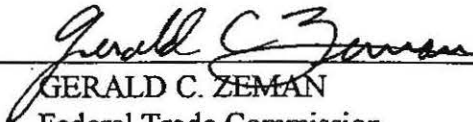
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the FTC and Defendant Wilkins to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or the punishment of violations thereof.

SO ORDERED, this 7 day of JULY, ~~1998~~ 1999


WILLIAM C. LEE
United States District Judge

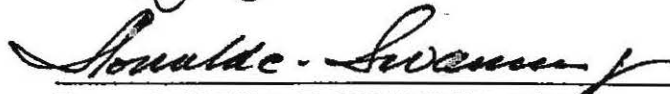
The parties consent to the terms and conditions set forth above and to entry of this Stipulated Final Judgment and Order without further notice to them.

**FOR THE FEDERAL TRADE
COMMISSION:**

By: 
GERALD C. ZEMAN
Federal Trade Commission
Cleveland Regional Office
Eaton Center — Suite 200
1111 E. Superior Avenue
Cleveland, Ohio 44114
(216) 263-3429

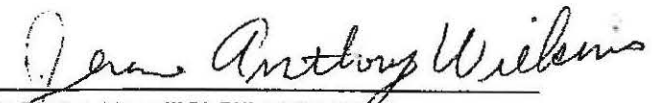
Date July 1, 1999

FOR THE DEFENDANTS:
Tri-State Advertising Unlimited, Inc.
Jerome Anthony Wilkins


By: DONALD C. SWANSON, ESQ.
Swanson & Campbell
One Commerce Building
127 West Berry Street
Fort Wayne, Indiana 46802-2366

Date 3/18/99

Jerome Anthony Wilkins:


By: JEROME ANTHONY WILKINS
Individually, and as an officer of
Tri-State Advertising Unlimited, Inc.

Date March 18, 1999

ATTACHMENT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TRI-STATE ADVERTISING
UNLIMITED, INC.,

a corporation, and

JEROME ANTHONY WILKINS,

individually and as an officer

of said corporation, and

DARYL ALLEN BENDER,

individually,

Defendants.

CIVIL NO. 1:98CV0302

JUDGE WILLIAM C. LEE

U.S. MAGISTRATE JUDGE
ROGER B. COSBEY

AFFIDAVIT OF JEROME ANTHONY WILKINS

I, Jerome Anthony Wilkins, being duly sworn, hereby state and affirm as follows:

1. My name is Jerome Anthony Wilkins. My residence address is 196 CLYDE

ANGOLA, IN 46703. I am a citizen of the United States
[street / city / state / zip code]

and I am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in *Federal Trade Commission v. Tri-State Advertising Unlimited, Inc, et al.* (United States District Court for the Northern District of Indiana).

3. On 3-8-99, I received a copy of the STIPULATED FINAL JUDGMENT AND ORDER, which was signed by the Honorable William C. Lee, U.S. District Court Judge, and entered by the Court on _____. A true and correct copy of the STIPULATED FINAL JUDGMENT AND ORDER I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on Sept. 27, 1999, at Fort Wayne Indiana

Jerome Anthony Wilkins
JEROME ANTHONY WILKINS

STATE OF INDIANA CITY OF Allen

Subscribed and sworn to before me
this 27 day of Sept. 1999

Vicki L. Swanson

Notary Public

My Commission Expires:

9-14-2001